

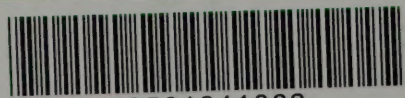
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DTI

PUBLIC PROCUREMENT REVIEW

Summer 1994

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This public procurement review has been undertaken by DTI's Single Market Compliance Unit (SMCU) with the assistance of other government departments--notably officials from the Public Sector Procurement Division of HM Treasury, DTI sponsor divisions and government regional offices.

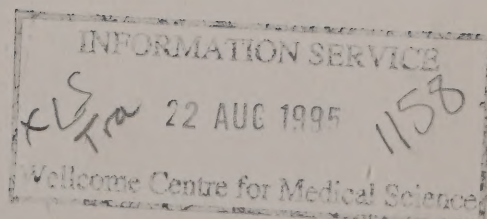
Cooperation and support was given by the CBI who, as a major contribution to the review, undertook a survey of over 4,700 companies and 780 local authorities and utilities. Other business organisations contributed to the study, including the Contracts and Procurement Research Unit of the University of Birmingham.

Over 100 business organisations: Trade Associations, Chambers of Commerce, European Information Centres and EC overseas posts were consulted. Officials at the European Commission were also consulted.

The review and production of the final report was led by Emma Barnes of DTI's SMCU.

Enquiries about the report should be addressed to SMCU, Department of Trade and Industry, Room 609, Ashdown House, 123 Victoria Street, London SW1E 6RB; telephone 071- 215 6745.

Summer 1994



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SUMMARY

SUMMARY OF THE REPORT

Issues

1. As part of the European Community's Single Market Programme, legislation has recently been introduced which aims at gradually opening up public procurement markets. A key issue for 1992 is how to make sure that the benefits of this market are shared by all those who are affected. The Commission's role is to ensure that the process of opening up the market is carried out in a way which is consistent with the principles of non-discrimination and competition. It is also to ensure that the interests of all those who are affected are taken into account.

2. This study was carried out to investigate the views of those who are affected by the opening up of public procurement markets. It was carried out by a team of experts who are familiar with the issues involved. The study was carried out in a way which was consistent with the principles of non-discrimination and competition. It was also carried out in a way which took into account the interests of all those who are affected.

3. The study was carried out at three levels:

- at the overall level, in aggregate;
- at the sectoral level, for each of the main sectors;
- at the individual level, for each of the main companies.

4. It aimed to reveal individual problems, identify general trends and to suggest changes in both the legislation and the way in which it is implemented. It was carried out in a way which was consistent with the principles of non-discrimination and competition. It was also carried out in a way which took into account the interests of all those who are affected.

Findings

5. At an aggregate level, an attempt was made to identify the level of competition in each sector. Our conclusion was that there was a high level of competition in most sectors. However, there were some sectors in which the level of competition was low. This was due to a number of factors, including the size of the market and the number of companies operating in it.

6. It should be noted that these findings are only a general indication of the situation. They are not intended to be a definitive statement of the facts. They are only a starting point for further investigation. It is hoped that they will be useful to those who are interested in the issues involved.

PUBLIC PROCUREMENT: is it really open?

SUMMARY

Issues

1. As part of the European Community's Single Market Programme, legislation has recently been introduced which aims at genuinely opening up EC public procurement markets. A key issue for HMG is how to make sure UK firms benefit fully from this market at home and throughout the EC. Whilst a separate export campaign is concentrating on promoting the opportunities in public procurement to UK exporters, this study has aimed to identify their major problems and to consider how they should be resolved.

2. This study set out to investigate the widespread perception that foreign markets are not opening up for competitive UK exporters to the same extent that UK markets are open to foreign suppliers. The strength of this perception was clearly demonstrated by the enthusiasm of the CBI to cooperate in a survey of its membership base as part of this initiative.

3. The study addressed the issue at three levels:

- assessing the problem overall, in **aggregate**;
- by looking for **systematic** problems and abuses; and
- by seeking **individual** cases where UK firms had encountered problems.

4. It aimed to resolve individual problems, identify generic problems, and recommend changes of both an operational and legislative nature at an EC level. It was conducted with the assistance of the Treasury, which takes the lead in Whitehall on public procurement.

Findings

5. At an **aggregate** level, we attempted to identify the level of openness in each Member State. Our consultant was asked to identify the level of domestic award for each Member State, in terms of the nationality of the successful lead supplier for every contract awarded during 1993. In 1993 the UK awarded **95.3%** of public contracts to UK lead suppliers: the second highest level of domestic award in the EC in a range of 75% upwards.

6. It should be emphasised that these figures cannot give a complete picture of the public procurement market. They do not, most importantly, take account of the origin of goods: but to attempt to collect origin/ domestic added value statistics would be a substantial burden on business, and the results would almost

certainly be unreliable. However inadequate, these figures do provide the best available means of assessing the situation at Member State level. They indicate, at lead contractor level, that all public procurement markets have remained difficult to penetrate. The figures do not provide any clear evidence that UK firms are being disproportionately excluded from public procurement markets by deliberately nationalistic and illegal purchasing practices.

7. We also considered the Member States' transposition of the directives, where the record is more uneven. The UK considers, despite a Commission challenge, that it has correctly implemented all the pre-1993 legislation, but the average level of transposition across the EC is put at only 59% by the Commission (as at May 1994). This must be a matter for concern, and HMG should press the Commission to take action.

8. We did identify some **systematic** abuses of the system by purchasers in some Member States, likely to disadvantage UK firms. These include abuse of the accelerated procedure in order to fast-track contracts, and the use of procedures for selecting bidders in such a way as to disadvantage foreign suppliers. Such practices could exclude non-traditional suppliers.

9. On an **individual** level we went direct to UK business, through the CBI survey and also through consultations with Trade Associations and other business organizations. Yet this extensive survey produced comparatively few individual cases of substance: eight cases in total.

10. There appear to be three main reasons for this:

- the Single Market legislation is recent, and firms have not had significant experience of it;
- the provisions of the directives govern procedures, and firms often feel their problems are not breaches of procedural rules;
- lack of confidence in, or knowledge of, the available enforcement mechanisms.

In themselves, these suggest a need for government action.

11. More generic areas of concern which emerged include:

- Enforcement. There is minimal evidence that companies are using legal proceedings to enforce their rights against purchasers, and in general there was a low level of reported satisfaction regarding complaints procedures. Suppliers are also reluctant to take legal action for fear of losing future contracts.
- Information Systems. These are inadequate for the purposes of monitoring by HMG and the Commission, and for firms trying to produce strategies for these markets.

- State aids. Some UK companies felt that they were being undercut in bidding for contracts by subsidised companies, primarily from two Member States. This arose mainly in relation to sub-contracting in the steel sector.

Actions

12. There are steps which should be taken to address the problems identified. These are set out in detail in the attached action plan, and fall into the following main areas:

- **Malpractices** by other Member States, such as abuse of the accelerated procedure, should be taken up immediately at a political or senior official level with the EC Commission. Transposition is being pursued by the Commission, and HMG should ensure that it is followed through effectively.

- In the longer term, we would want to see an increased role for the **EC Commission** in monitoring the market more closely, and providing better information relating to its operation. The Commission is where the detailed work on problems has to be done, as they have the direct responsibility, the clout and the expertise to push recalcitrant Member States into genuine compliance.

- Within **HMG**, we must establish clear responsibilities for dealing with both individual complaints against purchasers in the EC(11) and generic problems. On the latter, the lead should be with the department, HM Treasury, which negotiated, and leads on continuing Brussels consideration of, the directives. This has potential staff resources implications if complaints increase, and evidence of generic problems develops further. The DTI Single Market Compliance Unit (SMCU) will continue to take the lead in investigating individual complaints and coordinating enquiries through DTI divisions, Treasury or posts. HM Treasury will take up complaints bilaterally with Member States and with the Commission.

- We must ensure that the **review** of the directives proceeds according to schedule: the first review, of the remedies directive, is to be complete by end 1995. HM Treasury has the lead on this and will ensure that HMG has a prepared stance on the issues of concern.

ACTION PLAN

<u>Objective</u>	<u>Means of Achieving</u>	<u>Key Dates</u>	<u>Lead Responsibility</u>
<u>Tackle Abuses/improve monitoring</u>			
End abuse of accelerated procedure	Commission to monitor and make public data from at least 1/1/93	-Commission to report -Review first results by end 1994	HMT (Public Sector Procurement Division)
Proper advertisement of EC(11) contract notices in the EC Official Journal*	Commission to monitor and make public advertising rates of the Member States from 1/1/93	-Commission to report - Data to be reviewed by Member States by end 1994	HMT (Public Sector Procurement Division)
Publication of contract award notices for each contract awarded*	Commission to monitor and make public data from 1/1/93	- Commission to report - Data to be received by Member States by end 1994	HMT (Public Sector Procurement Division)
Provision of contract values for all public sector award notices*	1. Commission to encourage voluntary publication perhaps of approximate values 2. Commission to consider amendments to directives to require values for use in aggregate form	- Commission to agree -immediate - Commission to report back to Member States by end 1994	HMT (Public Sector Procurement Division)

Provision of aggregate data by Commission*	1. Commission to meet existing obligations under the directives 2. Member States to be consulted on publication in the Official Journal	- Commission to report by end 1994	HMT (Public Sector Procurement Division)
Review implications of all the data published above*	1. Collation analysis and distribution of data through Public Procurement Committee 2. Interdepartmental review of information	- begin review first quarter 1995 - report by mid 1995	HMT (Public Sector Procurement Division) with other interested departments
Improve Commission enforcement*	Persuade Commission to allocate resources to EC-wide monitoring of both the application and the effectiveness of the directives as well as case work and infringement proceedings	- agree end 1994 - Commission to report back by mid 1995	HMT (Public Sector Procurement Division)
<u>Future Handling of Complaints/Problems</u>			
Pursuit of complaints raised by UK firms*	1) Investigation, coordination and assistance in taking up with purchaser. 2) Taking up bilaterally with Member States and the Commission	- as cases arise	Single Market Compliance Unit at DTI, with HMT assistance - HMT/posts

<p>Pursuit of generic problems arising from the study: notably apparent abuse of qualification charges and regional preference schemes</p>	<p>Taking up bilaterally with Member States or the Commission</p>	<p>- immediate</p>	<p>HMT with SMCU and FCO assistance</p>
<p>Sectoral monitoring of market with aim of identifying further generic problems</p>	<p>Encourage proactive monitoring by Trade Associations</p>	<p>- immediate</p>	<p>DTI Sponsorship Divisions</p>
<p>Identify means to tackle state aids problem</p>	<p>Continued review of means available within UK; consider need for new measures in the directives</p>	<p>- immediate</p>	<p>DTI (VMM/ECTR to lead on current review) and HMT</p>

Promote Export Opportunities

<p>Improved representation of UK suppliers' interests in public procurement issues to increase their access to the market</p>	<p>Reorganization of existing division of responsibilities in DTI</p>	<p>- review by end 1994</p>	<p>DTI (negotiation between ECTR, CD and sponsor divisions)</p>
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Better access to opportunities in public procurement markets	Currently underway as separate export campaign run by XEA and reporting to ministers	- report end 1994	DTI (XEA Division in consultation with other divisions)
Provision of improved market information to companies	DTI examination of current projects to extract this type of information from TED, and the means of supplying it to companies	- report end 1994	DTI (CD, XEA and SFBL divisions)

The Directives

Satisfactory transposition of the directives by Member States*	Commission to monitor and bring infringement proceedings	- satisfactory transposition or proceedings by end 1994 (except Greece Spain and Portugal which have derogations) - Commission to report end 1994	HMT (Public Sector Procurement Division)
UK programme for revision and determining objectives for directives (See annex 2 for legislative timetable)*	1. Establish and influence Commission's programme for review process 2. Establish primary UK objectives	initial conclusions for progressing work -immediate - Bilateral discussions with Commission from September 1994	HMT (Public Sector Procurement Division) Input from DoE, DTI and other interested departments

Improve Information Systems

Punctual Publication of notices by the EC Official Journal	Adherence to timetable for publication of notices; Commission to monitor delays in publication	- Commission to report to Advisory Committee by end 1994	HMT (Public Sector Procurement Division)
Satisfactory development of SIMAP (the new public procurement information system)*	1) Monitoring by Advisory Committee on Public Contracts 2) Secondment of UK national expert to Commission 3) Pilot project on data input	- satisfactory SIMAP development by mid 1996 - secondment has been arranged	HMT (Public Sector Procurement Division) Government Purchasing Service Northern Ireland
Fair and open award of SIMAP contracts, with opportunity for participation by UK firms*	1) Monitoring by Advisory Committee on Public Contracts & TENS panel 2) Liaison with interested UK companies	- as proposals arrive	HMT (Public Sector Procurement Division) with DTI sponsorship divisions

* These measures are already being taken forward by HM Treasury.

PUBLIC PROCUREMENT: Is it really open?

INTRODUCTION

1. The aim of the initiative was to investigate the problems of UK firms trying to sell to public purchasers in the EC(11), and to identify ways of rectifying their problems.

2. The study examined the operation of the public procurement market from a number of angles. These include:

- Are other Member States following the rules?
- If not, who are the offenders?
- What is the impact of the rules on purchasing patterns?
- Can a level playing field be achieved, and, if so, how?

BACKGROUND

3. As part of the Single Market programme, a series of EC directives have been adopted with the aim of opening up public procurement markets across the EC. Since 1 January 1994, with the entry into force of the European Economic Area (EEA) Agreement, these Directives also apply to Austria, Finland, Iceland, Norway and Sweden, effectively extending the Single Market to 17 countries.

4. The directives cover purchases of Supplies (adopted by Council 1988; implementation 1989 -now replaced by consolidated supplies directive 1993; implementation June 1994), Works (1989; 1990 -now replaced by consolidated works directive 1993; implementation 1993) and Services (1992; 1993), and purchases by Utilities (1990; 1992 - now replaced by consolidated Utilities directive 1993 to cover services; implementation July 1994). In the case of the Utilities directive, the rules apply to private bodies, as well as public, where these bodies have special rights. Remedies directives (1989, 1992; implemented 1991, 1992) established a system of compliance. In the UK the directives are implemented by statutory instruments.

5. The legislation built on earlier directives, introduced during the 1970s, which aimed to eliminate national preferences in public purchasing. However, unlike the present legislation, the earlier directives did not give the right of legal redress to suppliers, and exempted certain key sectors: water, transport, energy and, for supplies, telecommunications. They also left significant potential

for evasion: for example by splitting, or underestimating the value of, contracts. They did not have a significant impact upon the levels of cross-border trade.

6. The rationale for opening was that there would be efficiency gains resulting from:

- the savings made by purchasers buying at the cheapest price available;
- the downward pressure on domestic prices in previously protected sectors, leading to savings for all their customers;
- a dynamic effect on the supply side, as national producers, inefficiently small by world standards, were no longer feather-bedded but replaced by efficient suppliers with EC-wide markets. These suppliers would enjoy economies of scale from mass production enabling them to compete more effectively on world markets.

These effects would be significant as public purchasing represents a very large market. Total public purchasing accounts for 15% of EC GDP, and contractual purchasing (ie excluding very small purchases, and non-traded goods such as electricity or water) accounts for 6-10% of EC GDP (Atkins Report, 1987). Potential savings in public expenditure were estimated at 17.2 billion ecus, around 0.5% of EC GDP (European Economy 35, March 1988).

7. The provisions of the directives aim to overcome nationalistic purchasing patterns by establishing a compulsory set of purchasing procedures:

- All public sector procurement contracts above certain threshold values (ranging from approximately £96,000 for supply contracts to £3.7 million for works contracts - the full list is given in annex 1) must be advertised in the supplement to the EC Official Journal (OJ);
- Advertisements in other publications must not include additional information or precede submission to the Official Journal;
- Specifications must be based on European standards where relevant;
- Invitations to tender may be open to all bidders, restricted to selected applicants, or negotiated with chosen suppliers, but in almost all cases the process must be competitive;
- Minimum timescales are given for receiving bids, or expressions of interest, dating from despatch of the notice, and designed to allow all suppliers an opportunity to bid;
- Selection of bidders, and contract-award, must be according to clear, objective, pre-stated criteria of an economic, as opposed to a nationalistic or political, nature;

- In most cases, purchasers are to accept either the lowest price, or the most "economically advantageous" bid. The latter can take into account a wide range of criteria such as delivery times, after sales service etc.

8. There is provision for review of the operation of the directives, and for the Commission to propose alterations to the provisions if necessary, usually within four years of the directives coming into effect. The review procedure is discussed in detail later, and the full timetable is given at annex 2.

THE STUDY

9. The study was set up to identify the main problems of UK business entering these markets, and the actions HMG could take to resolve individual problems and feedback desirable changes in the legislative and operational frameworks to the Commission.

10. It originated in part from a widespread perception amongst UK business that while the UK market had opened up, this had not been the case in other Member States.

11. The study has addressed the issues in a number of ways. These have included:

- a joint survey with the CBI of the experiences of 4,717 UK suppliers to the public purchasing market: this survey attracted a 6% response rate - slightly disappointing, but fairly typical for a business survey of this type;
- a study conducted by Birmingham University of the information on contracts awards published in the supplement to the Official Journal;
- a consultancy study of the use of certain advertising procedures, and the publication of contract awards, in the Tenders Electronic Daily (TED) - the electronic equivalent of the Official Journal.
- extensive consultation with Trade Associations, European Information Centres, overseas posts, Chambers of Commerce, officials at the European Commission, companies and other Whitehall departments. Those bodies formally consulted or who expressed an interest in the study, over 100 business organizations, are listed in annex 4.

12. The study has been conducted with the assistance of officials from the Treasury, which takes the lead in Whitehall on Public Procurement. The Treasury represents the UK on the Advisory Committee for Public Contracts, which meets regularly in Brussels to advise the Commission on the operation of the public procurement regime.

FINDINGS

Transposition

13. Transposition of public procurement legislation has been slow in comparison with other EC legislation. According to Commission figures only 59% of the necessary national transposition measures have been taken. The UK has met its obligations, although not always quite on time, and is resisting a challenge on its implementation of an exclusion from the Utilities Directive. **(Situation as at May 1994).**

14. The Commission has been active in bringing infringement proceedings under article 169 of the EC Treaty against Member States for late or incorrect transposition of the directives: there are currently twenty five cases before the European Court of Justice, brought by the Commission against Member States regarding late or incorrect transposition.

Advertising and Information

15. In this section we consider what the information systems actually are, and what we want from them. There are three areas of consideration:

- Information to businesses about specific contracts;
- Information to business about sectors, purchasers and national markets, which facilitate the creation of business strategies;
- Information enabling the Commission and Member States to monitor the market, and the application and effectiveness of the directives.

What are the information sources?

16. The main sources of information on individual contracts are the supplement to the EC Official Journal (the OJ), and its electronic equivalent, Tenders Electronic Daily (TED). Both are updated daily.

17. The OJ contains for the EC, the EEA and some GATT signatories:

- Periodic Indicative Notices (PINS), forecasting major procurement intentions;
- notices advertising qualification systems for the utilities;
- contract notices inviting bidders, or applications to invited suppliers to tender or negotiate;
- contract award notices.

18. A contract notice inviting bidders or a request to participate will contain certain basic information: eg name and address of purchaser, details of the goods or services required, deadlines for request of documents and for submitting bids. A summary of the essential details is published in all EC languages. An example of a notice is given in annex 5.

19. The TED contains the same information, but rather than going through all the notices, it is increasingly possible to bring up particular groups of contracts by keyword searches or typing in sectoral codes. Companies can subscribe to TED direct, but there are also agents who take information from TED and disseminate it to companies: the main players here being Euro-Info Centres, who provide a subscription service, mainly to small and medium-sized companies.

20. At present TED is not user-friendly, and is expensive. It is difficult to search due to inadequate sector categorization: categories are frequently too wide (eg "miscellaneous services") or overlap for certain products. A typical case is that of oil and gas exploration services, which frequently do not appear under that code, but under the "energy" codes. There are also differences in national technical vocabularies which make word searches difficult, and differences in the formats used by different purchasers.

SIMAP

21. There is currently Commission work underway to improve the information systems. The SIMAP project (Système d'Information Marchés Publics) aims to:

- improve the quality of available information;
- increase its dissemination;
- improve communications between purchasers and suppliers;
- improve monitoring of the market.

22. It encompasses a range of initiatives: computerization of the input of information into TED; standardization of vocabularies; development of a standard format for notices; adoption of a new product classification system; use of e-mail for communication between purchasers and contractors; information on below threshold contracts; access to other databases. These initiatives are being taken forward at present in the form of pilot projects in cooperation with the Member States. The Commission and Member

States are also actively involved in the development of EDIFACT/EDI messages.

23. HM Treasury is monitoring the progress of SIMAP, through its representation on the Advisory Committee on Public Contracts.

Are they useful to business?

24. In practice it is unlikely that companies win contracts after identifying them for the first time in the OJ or TED. The time to respond is often very limited. Under the open procedure, a 52 day minimum is specified between dispatch of the notice and the bid, 37 days for restricted and negotiated, but these can be reduced to 10 days in case of "urgency". Allowing time for publication and delivery of the Official Journal and requests and receipt of contract documents often reduces this time significantly. In practice, successful firms are often aware of major contracts, and in greater detail, prior to publication.

25. This is backed up by the joint **DTI/CBI survey** (copy and results in annex 3). Although around half the respondents made regular use of the OJ, the majority of respondents cited personal contact as their main means of finding out about contracts. Larger, exporting companies, who generally reported less information-gathering problems than smaller companies, almost invariably had local agents, joint ventures or subsidiaries who could act for them in the country of the purchaser. In many cases the OJ may be used to pick up details of contracts which are already known about from other sources.

26. Only 4% had ever used TED, and the Euro-Info centres, which provide details on contracts taken from the TED system, had only ever been used by 5% of respondents.

27. It follows that simply improving TED is not likely to be the best way to improve the chances of UK firms winning individual contracts (although it might reduce the costs of search for all EC suppliers). Furthermore, it is unlikely that devoting resources to increasing awareness of the existing TED system would have a significant positive impact on UK exports. In practice, if new UK entrants are to penetrate these markets they will need more than a list of invitations to tender.

28. However, the OJ and TED have another use: as a source for the construction of market information, of the type which permits firms to construct long-term strategies for the penetration of markets, as opposed to simply responding opportunistically to individual contracts. In the CBI survey, respondents cited their main needs as the identification of purchasers, and information about sectors, as opposed to information about procedures, compliance or the TED system. The production of this type of information requires that the basic data sources are accurate, comprehensive and possible to analyse.

29. There is work being done on how to use TED as a source of this type of sectorally-specific market information, by the Northern Development Company and others. **DTI should examine developments, consider their advantages and whether it can provide assistance**

either in the development of such systems to other regions or the better dissemination of the resulting information.

Monitoring

30. The quality of the information systems also makes monitoring of the system more difficult, for the Commission and for national governments.

31. For example, complaints brought to the Single Market Compliance Unit about the absence of carpet contract notices on the TED appeared to be backed up by an analysis of the data on TED. However, the Commission have argued (though the SMCU is not convinced of the explanation and is pursuing further) that some countries may advertise carpets, not as separate supplies contracts, but as parts of larger works contracts. This might mean, for example, that carpet orders were subsumed within construction projects.

32. At present it is difficult to resolve such disputes due to the inadequacy of the system, and hence it is more difficult to address the concerns of businesses, who feel that their particular sector is under advertised. Equally, more general levels of compliance are difficult to assess, as there is a lack of accurate aggregated data.

33. Effective monitoring and the provision of strategic information to UK suppliers does require an improvement of the information systems: HMG must press for this at an EC level.

34. SIMAP may help in some problem areas - eg late publication of notices. Ultimately, it may help to make TED more user friendly. However, there are some problematic aspects, which must be carefully monitored in terms of their impact on the UK. The proposed decentralization of information input to a national level may make national abuses easier, and difficult to counteract. It may enable some Member States to divert information on contracts first to their own suppliers. National publication is permitted from the date of despatch of notices to the Official Journal. National publication may therefore happen several days or even up to two weeks prior to OJ publication. It is essential that the SIMAP project alleviates this current unsatisfactory situation and that UK firms are not disadvantaged.

35. In addition, the new network itself represents a substantial IT contract. It is important that we ensure that the specifications for this are drawn up and advertised in such a way as to permit the UK a fair chance of winning business.

36. We do need better information systems, for the reasons identified, but, from their perspective, increasing the transparency of the system overall will not give any particular advantage to UK suppliers. From a UK perspective, it might be better to focus resources on particular assistance to UK firms, via

promotional policy, rather than putting most effort into the transparency of the EC-wide systems.

Advertising

37. Under the directives, purchasers are obliged to advertise their contracts in a model format in the OJ and TED. (An example of such a notice is given at annex 5). After the contract is awarded, the purchaser must then publish a contract award notice in the Official Journal.

38. We have received repeated complaints that other countries are not advertising to the same extent as the UK. We also have evidence to believe this is the case from sectoral surveys by the Single Market Compliance Unit (eg carpets, printing, office furniture) in which analysis of the TED database has suggested that some Member States are failing to advertise.

39. The **Birmingham University** report finds a marked disparity between the number of contract awards notified and the relative GDP of each Member State. This is shown in Table 1 and discussed in more detail from paragraph 49.

40. Further, our statistical analysis finds that Member States are failing to comply with their obligation to follow up contracts with award notices. Only Denmark, Luxembourg and the UK were found to be following up over 50% of their Invitations to Tender (ITTs) with publication of contract awards, while three Member States had publication rates of under 10%.

41. From our previous analysis, it follows that we should not over-estimate the importance of advertising in terms of the individual opportunities lost to UK firms. But unless there is comprehensive advertising, there will be an obstacle to effective monitoring, both by the Commission and by UK government, and to the provision of strategic information about this market.

The UK must press the Commission to monitor advertisement rates by Member States, of all types of notice, and to provide comprehensive data on publication levels.

Qualification Systems

42. Purchasers in the utilities sector can operate qualification systems for suppliers. Under these systems, purchasers can hold lists of suppliers who they have "qualified" as suitable contractors, for example in terms of their technical ability or financial standing. Qualification systems must be: advertised in the Official Journal, potentially open to all applicants, and have fair and evenly applied qualification criteria.

43. Utilities operating such systems need not publish a call to tender for individual contracts, but can simply select qualified tenderers from the list and award a contract according to the restricted or negotiated procedures. They are, however, required to publish contract award notices in the Official Journal.

44. Used appropriately, qualification systems are a means of reducing the costs of the purchasing procedure to both purchasers and suppliers. Both are saved the costs of rechecking the credentials of suppliers for each individual contract; and by eliminating suppliers at this stage, the significant costs of putting together a bid will be restricted to a few suppliers.

45. Whilst the use of such systems may be valuable, there are abuses which should be addressed. These include:

- unjustifiably large charges to suppliers for participating in the qualification process;
- suppliers being continually forced to requalify;
- qualification tests and requirements that are irrelevant to the work a supplier would actually do for the purchaser.

All these are examples of poor practice by purchasers, and should be opposed regardless of their nationality.

46. Even when applied to all suppliers, high charges may act in a discriminatory manner. The supplier must take the risk that the cost of qualifying will never be recovered and regardless of their competitiveness, the supplier may be reluctant to take this on unless sure of having a real chance of winning the contract. In practice, this could mean they have a prior supply relationship with the purchaser.

47. Qualification systems have been the subject of complaints from suppliers, focusing on their unfairness or their costs. In the **DTI/CBI survey**, qualification was cited as the second largest deterrent to selling to purchasers in both the utilities and public sectors (after lack of local contacts), and by far the largest procedural deterrent. The Trade Association **BEAMA** has run a campaign against qualification charges.

48. A continental electricity company provides a good example of the type of practice that should be opposed. They have reportedly charged upwards of £6,000 to suppliers purely for the documentation required for prequalification, plus full reimbursement of all the costs of physical audit (which could well amount to the same again). This followed a long period in which they had failed to advertise any purchasing contracts at all. This particular example was mentioned several times in the CBI survey responses.

49. This is a sensitive area for the UK: utilities here frequently charge for participation in qualification systems, and this matter is currently being investigated by the Commission. The charges that have generally been cited to us, however, have been quite low: generally less than £500. This should not, therefore, prevent HMG opposing the practice in other Member States.

50. In the past we have been too hesitant to tackle such behaviour, as not technically illegal under the terms of the directives. **The UK government should not hesitate to target purchasers using such practices. Cases could then be taken up bilaterally and with the Commission.**

Bidding

51. The directives allow for reduced timescales for procedures in cases of urgency (known as accelerated procedures). For example, for a restricted procedure supplies contract, the time limit to express interest in bidding would be reduced from 37 to 15 days, and for receipt of bids from 40 to 10 days.

52. Inevitably use of these procedures curtails the time suppliers have to mount a bid; and due to resource constraints at the OJ, it also means that the contract notice will only appear in the original language. Abuse of this procedure, whether as a deliberate ploy or through administrative inefficiency, would be likely to exclude new suppliers.

53. There is real evidence that these procedures are heavily used in Italy and Germany. This is supported by our statistical analysis which found that over half of all accelerated procedure contracts in the EC were from Italy (representing over 20% of all Italian Invitations to tender). Germany had the second highest use of the procedure.

54. According to our sample, the UK had the third highest use of the procedure, but publishes far more contract notices overall. The case against the UK is therefore less strong.

55. The Commission should monitor use of the accelerated procedure, and make the statistics available to the Member States. Significant use of the procedure, by Member States, sectors or particular purchasers should be investigated.

56. This situation is rather different with the **negotiated procedure**. This procedure allows a purchaser to negotiate the terms of a contract with one or more suppliers (as in the case of restricted or open procedures the purchaser must lay down specifications before hand, but there is more scope to negotiate the detail of the specifications).

57. In the public sector, negotiated procedures can only be followed in limited circumstances: when use of other procedures has not produced satisfactory tenders, when the project is research based, or when there are significant risks associated with the work. Further conditions (eg extreme urgency) are needed to justify use of the procedure without prior publication of a contract notice. It is clear that the procedure is not intended for routine use.

58. However, such procedures are still based on competition, in the sense that the supplier must be selected by "publicly known qualitative criteria". The procedure may permit a more constructive relationship between purchaser and supplier, from which the purchaser may gain added value, for example through encouraging innovation.

59. There is a perception within the Commission and other Member States that this is undesirable, and this is also implied in the

preamble to the directives. However, this procedure simply allows the purchaser and supplier to negotiate a particular contract. It is a competitive procedure, and could have a positive impact on competitiveness in UK industry. It is freely available for the utilities, and standard for complex services contracts.

60. It is important, therefore, that we defend use of the competitive negotiated procedure, considered to be good practice for complex procurement. This will be particularly important during the review of the directives.

61. A related problem is late publication of notices, due either to late delivery of the contract notice to the OJ publication office or administrative problems there.

62. Combined with use of the accelerated procedure, this may make a response from a non-domestic supplier unfeasible. Although we have no figures on this, deliberate late delivery may be common practice in certain Member States and in certain sectors. UK examples of late publication have come to our attention: however there is no evidence of systematic abuse in the UK.

Pressure must be put on the Commission to improve the poor performance at the Official Journal publication office.

Contract Award

63. This is the key area of the public procurement market: implementation of the rules is irrelevant if competitive UK companies are not winning contracts.

64. We commissioned a comprehensive analysis of all the contract award notices published in the Official Journal during 1993 - some 13,000 notices - from the Contracts and Procurement Research Unit at Birmingham University. These notices are published in the Official Journal after the award of a contract, conveying basic information such as the name and address of the successful supplier and the type of goods supplied.

65. This data cannot be taken as a complete record of procurement activity. It is clear that even when purchasers initially correctly advertise their contracts, they frequently do not follow up by advertising the contract award. If they do, they frequently omit crucial information, such as the contract value, on the grounds of commercial confidentiality.

66. This is a sensitive area for the UK, whose purchasers are particularly prone to omit the value from the contract award notice. For the utilities, publication of the value is optional, although the value must be provided to the Official Journal office. For other public purchasers, although the directives permit the withholding of this information, it is clear that this was intended as the exception rather than the rule. Although there may be reasons of commercial sensitivity precluding release of this information to the extent originally envisaged in the directives, it is a serious obstacle to effective monitoring of the market.

67. At the very least, information about contract values must be conveyed to the Commission, sufficient to compile aggregated statistics for sectors and purchasers. Purchasers might also be able to provide an approximation of the contract value for publication.

68. The omission of values from many award notices meant that analysis had necessarily to be done by **numbers** of contract awards. This could lead to distortions in a few cases.

69. The failure of many purchasers to publish contract award notices at all reduces the accuracy of the data in some cases. This is particularly true for those countries where the total number of contract awards published is abnormally low. The figure of 100% domestic sourcing for Greece, for example, can be discounted with confidence.

70. A more fundamental criticism of the figures is that they only record the nationality of the successful bidder, in terms of the address of the lead contractor as recorded on TED. They say nothing about the origin of the components used, or even the place of manufacture of the finished goods, in the case of supply contracts.

71. It is worth noting that a Commission survey, which attempted to go beyond the location of the nominal supplier, to analyse ownership and place of manufacture, found significantly lower levels of domestic supply. This was, for an extremely small sample, and it is highly unlikely that this method could be adopted for a comprehensive sample. Not only would the research required be extensive, but it would require detail from companies that they would most likely to be unwilling or unable to provide (most UK companies are currently reluctant even to reveal their contract values to researchers).

72. Furthermore, the new legislation affects the relationship between the purchaser and the main supplier. If it was having a major impact, we would expect to be able to measure it at this level.

73. One of the key findings is shown in **Table 1**. This demonstrates the relationship between number of contract awards and the relative GDP of the different Member States within the EC. Three Member States have derogations which mean they do not yet have to advertise their utility contracts: even so, the disparities are striking. Two Member States are publishing significantly fewer contract awards than would be expected from their GDP.

74. There are explanations for the disparities, beyond levels of compliance. Market testing, compulsory competitive tendering and the autonomy of departments and local authorities explains to some extent why the UK generates more contracts; the extent of centralisation of purchasing, and varying tendencies to source in-house also affect the numbers of contracts generated. The Commission has commissioned a study of the volume of purchasing by each member state as part of the GATT negotiations: when these

TABLE 1

Percentage of EC Contract Awards by Member State

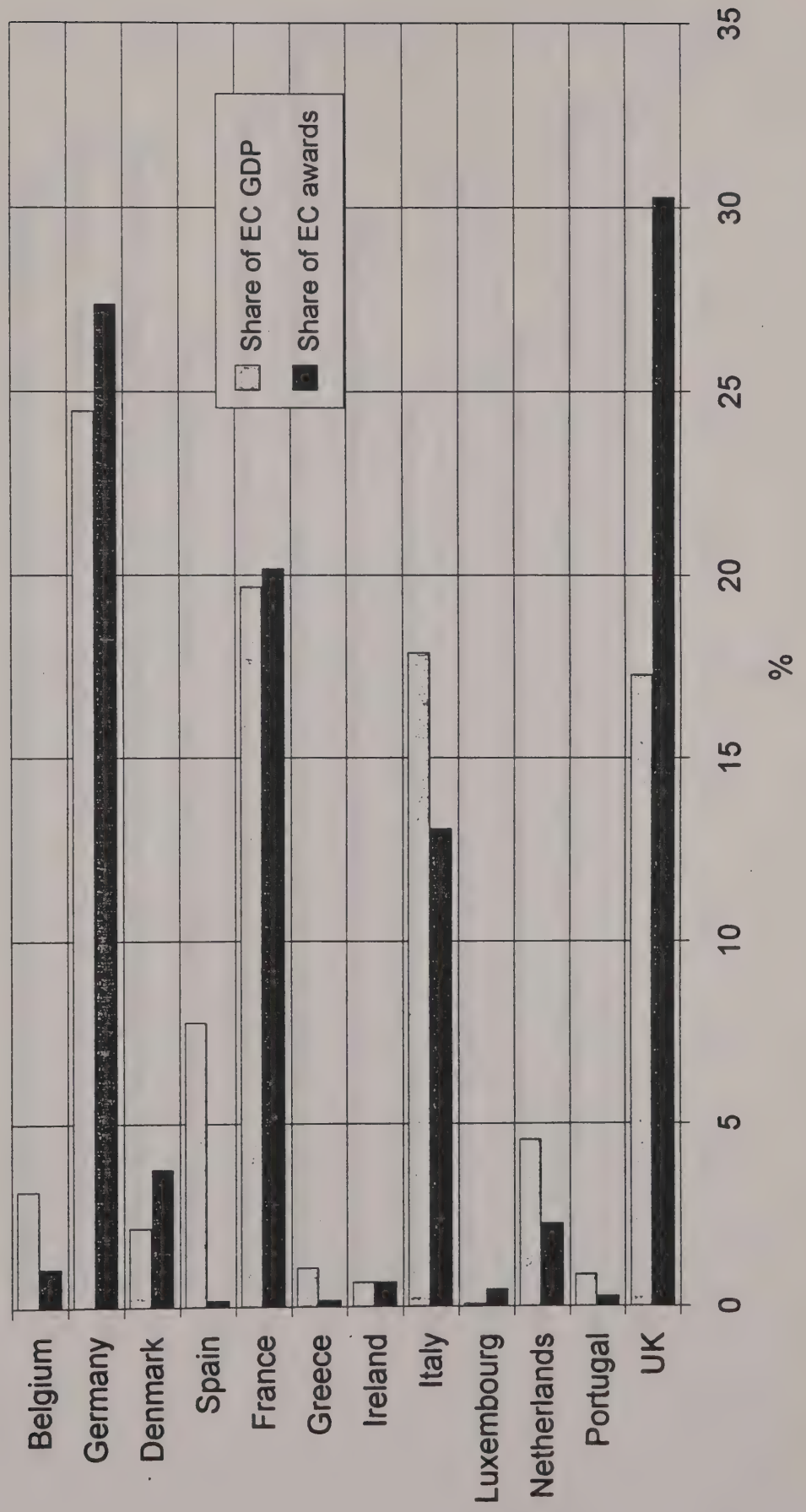
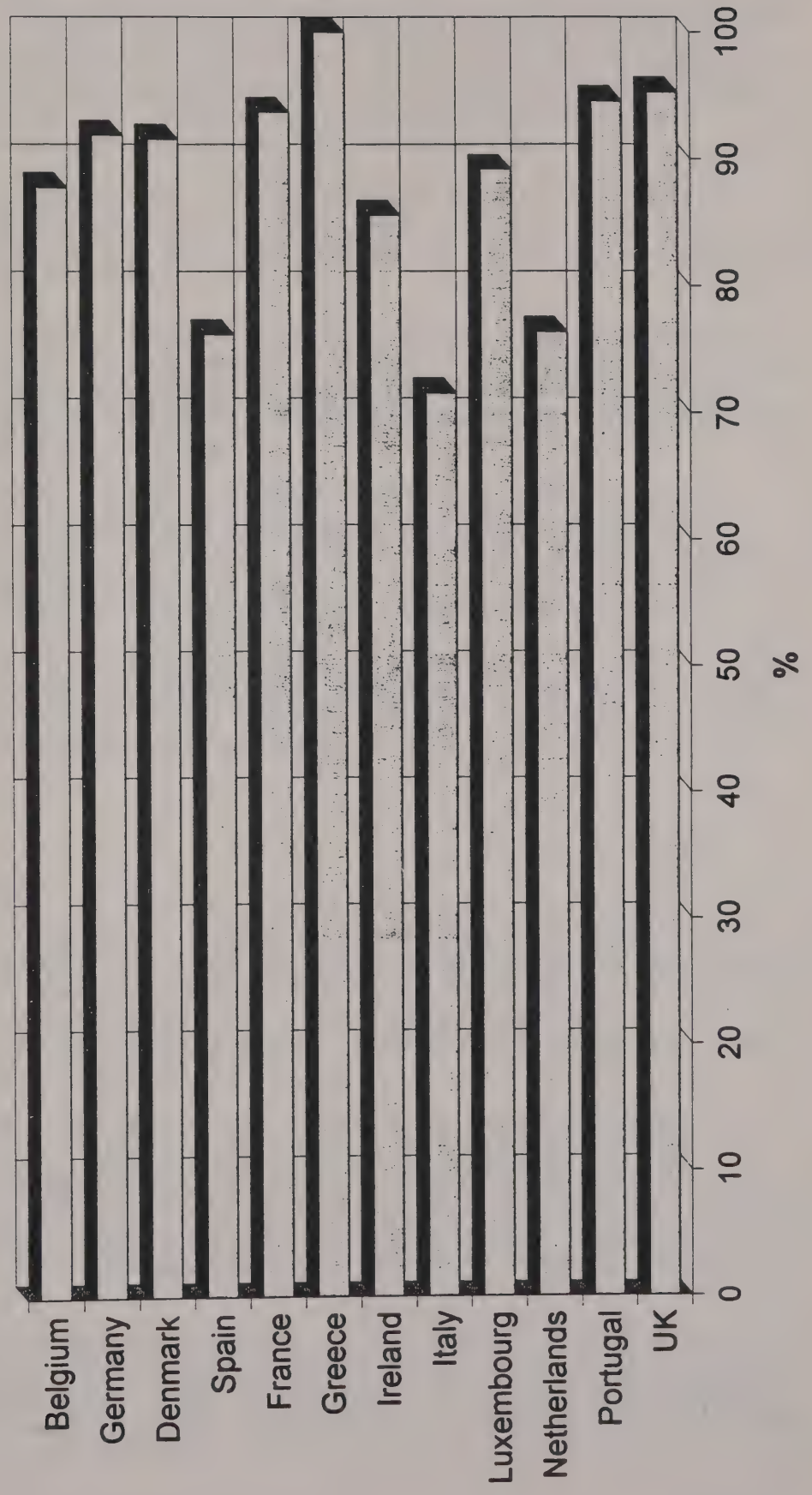


TABLE 2

Percentage of Contracts Awarded to Domestic Suppliers



figures become available, they may reduce or provide a better comparison with the number of contracts than does GDP.

75. Another finding of interest is the very small number of contract awards published by EC institutions, of which there were only **three** during 1993. Although not formally bound by the directives, they voluntarily agreed to follow the procedures laid down, and should be formally covered from the beginning of 1996. In this context, the low level of contract awards published certainly seems a breach of the spirit of the law.

76. The study then analysed the nationality of the successful suppliers of public contracts in each Member State. The results, showing domestic sourcing as a percentage of total public contracts awarded, are shown in **Table 2**.

77. Most Member States have a very high proportion of contracts going to suppliers with a domestic address. **On this basis, the UK has the highest level of domestic sourcing after Greece (whose figure is certainly unreliable): 95.3% of contracts being awarded to suppliers with a UK address.**

78. Spain and Italy actually appear relatively open on these figures, although the smaller numbers of contracts makes the findings more doubtful. However, France, the UK, Germany and Denmark, whose publication of awards in Table 1 are much higher, all awarded over **90%** of their contracts "domestically".

79. The UK figure is given some additional support by the concurrent **CBI survey** of purchasers, which was also sponsored by DTI. From an admittedly small sample, **92%** of business, by value, was reported as going to UK suppliers, and only 5% to other EC countries.

What does it mean?

80. The above figures could simply reflect the fact that the directives have simply not been in place long enough to have had an impact. This may mean purchasers are still wary of new suppliers, or it could mean suppliers are not yet responding to the opportunities: low levels of response from non-UK suppliers have been reported by all UK utilities.

81. Alternatively, the impact may be more in terms of joint ventures, takeovers, the setting up of subsidiaries and sub-contracting - developments which cannot be easily picked up from the data. This might happen because as public procurement opens up at a national level, the newly successful domestic suppliers are more prepared to use foreign sub-contractors or foreign origin goods.

82. There is some evidence for this in the French case, where successful suppliers are frequently consortia of multinationals, with a French company as lead contractor. This type of behaviour - using a domestic lead company - could be the commercially rational

response to the directives, minimising the problems of cultural, language or locational differences in the negotiating process.

83. However, these findings could also point to an important divergence between the **procedures** and the **behaviour** of purchasers. The directives govern the former, and were introduced precisely because public purchasers lack the commercial incentives and constraints of the private sector. But it is possible that while enforcing outward compliance with a set of procedures, the legislation will not achieve its primary aim of ensuring objective contract award. This divergence is illustrated by some of the cases we have examined, and is a particular problem in dealing with compliance.

84. This divergence need not imply deliberately chauvinistic purchasing. Indeed, the high level of domestic sourcing in Denmark and the UK, who seem generally willing to comply with the directives, suggest this is unlikely to be the case. There are clear advantages to local sourcing when it comes to: established reputation as an indicator of quality, long-term supply relationships, ease of communication and delivery, knowledge of established purchasing patterns etc. All these are likely to become more important when purchasers also have to filter large numbers of bids.

85. One clear implication of these findings is that winning access to public contracts elsewhere in the EC is likely to be more difficult for UK firms than simply ensuring their legal rights of access. The evidence suggests there are significant structural barriers to trade in these markets.

86. **HMG, therefore, has a role in disseminating high quality, focused information, about market conditions, the purchasers, sectors, and different legal and administrative systems.** The current DTI public purchasing booklet, for example, concentrates entirely on explaining the procedures to suppliers, which this study suggests is of marginal importance. By contrast, the current export promotion drive, directed by a dedicated export promoter, is providing information about purchasers, and even bringing EC(11) purchasers and UK suppliers face to face. This approach is likely to be the best way of getting UK companies into this market.

Regional Preference Schemes

87. During the course of the study we identified one instance of a Member State setting up its own regime governing contract award with the aim of stimulating domestic industry, in such a way as appeared to breach the EC directives.

88. The Federal Government in Germany instituted two schemes, both directed at giving preferential treatment to suppliers from the five new (Eastern) Länder. In the more significant of these, where a German company from one of the previous West German Länder or one from another Member State had bid the lowest price for a contract, a German company from one of the new (Eastern) Länder would be awarded the contract at that price, provided its own bid had not been more than 20% higher. For UK companies, the problem posed by this scheme is that German companies from one of the previous West

German Länder qualify for this preferential treatment provided they supply over 30% of the contract from the five new Länder: a provision which can lead to the rejection of UK subcontractors. We are currently taking this case forward bilaterally.

Attestation

89. Attestation systems allow purchasers to seek independent, third party approval for their contract award systems. Purchasers are able to pay an accredited authority to attest to the objectivity and commercial soundness of their purchasing. For such a system to work effectively, it would need to be set up in a standardized manner throughout the EC. Work is in hand on the development of a European standard.

90. Potentially attestation could provide a means of focusing purchasers on the most economically advantageous bid, as opposed to the necessity to conform with procedural rules. This would also constrain the operation of UK purchasers: however, as UK purchasing policy, and the market forces which operate on private sector utilities, already prioritises value for money, the net effect of such a system should be to make it easier for competitive UK suppliers to win contracts in the EC(11). It would reward attested purchasers, if they could derogate from the detailed rules. A credible attestation system, backed up by remedies for discrimination, would boost supplier confidence and encourage entry into new markets.

91. There is currently provision for attestation under the Utilities directive, and a UK system is being set up. This is a voluntary extra for purchasers: they can choose to pay accredited bodies for the service, but this does not exempt them from the obligation to follow the detailed procedures laid down in the directives. The problem with this scheme is that there is no significant incentive to purchasers while they are still constrained to follow the procedures: attestation will simply represent an additional cost. It has been suggested, however, that purchasers could see it as protection against possible legal action.

92. The reviews procedure should consider attestation systems as an alternative to following procedural rules.

State Aids/National Ownership

93. State aids affect the public procurement market in two ways: subsidies to suppliers which may permit them to undercut unsubsidised firms, and subsidy of purchasers, which may reduce their incentive to choose the most efficient supplier.

Subsidised Suppliers

94. Some of the main concerns from UK companies have focused on the UK market. UK steel fabricators, for example, feel that they have lost contracts as a result of subsidies to Italian and Spanish steel producers. Other sectors where state aids is a potential concern include the offshore sector and carpets.

95. It is not always clear whether the alleged aid is legal or illegal; where aid is legal, HMG is inevitably constrained in the action that can be taken. It is also true that the problem frequently concerns awards made by main contractors rather than public purchasers: this relationship is not covered by the Public Purchasing directives, although purchasers may have the scope to influence the actions of their main contractors.

96. In the past, HMG has tended to argue that if other Member States want to subsidise their industry, then, as consumers, UK purchasers should be free to benefit. However, this stance risks ignoring the long-term interests of the equivalent, unsubsidised British sector.

97. These issues are currently under review in different parts of DTI, and there is a general search to identify means by which UK policy could overcome this disadvantage to UK firms. For example DTI is actively considering a number of measures to reduce the impact these subsidies are having on the UK steel fabrication market. Measures under consideration include:

- putting an obligation on main contractors to require all bidders to state whether any subsidies are involved in their bids and, if so, whether they have been notified to the Commission.
- increasing awareness amongst purchasers and main contractors of the possible adverse effects of dealing with illegally aided companies;
- using the provision within the directives which permits purchasers to reject "abnormally low" bids to exclude illegally state-aided companies.

98. **All these ideas need to be explored further in terms of feasibility and legality, in deciding which to take further.**

99. At the same time, the establishment at the December 1993 Industry Council of tighter rules and a more rigorous monitoring regime for steel state aids should also lead to a gradual reduction in the extent to which unsubsidised producers are disadvantaged in this sector. DTI ministers have emphasised the importance of effective implementation of the new monitoring arrangements.

Subsidised Purchasers

100. This has received less attention in our responses from businesses, but was, of course, one of the key reasons for introducing the directives. But if we are interested in why purchasers are failing to award to best economic advantage, then their ability to escape ordinary commercial constraints and incentives must be important.

101. A shift in regime from following **procedures** to enforcing **commercial behaviour** could represent one means of overcoming the

lack of constraints in the public sector. This is the idea that lies behind attestation.

Remedies and Enforcement

102. At present suppliers can seek legal redress from purchasers in national courts or other national review bodies. They can also take complaints to the Commission, which has the power to initiate review proceedings. A voluntary, non-binding conciliation system is also being developed as an alternative to legal action in the utilities sector. Alternative dispute resolution has also been used as way of resolving disputes: for example, in the UK construction sector.

Companies

103. The right of legal redress by suppliers is one of the newest aspects of the regime. It is difficult, therefore, to assess it's efficacy at this stage, especially as there is no information at present about the number of cases brought throughout the EC. (The Commission want to collect detailed information from the Member States on the use of court procedures: however, HMG, for example, only has access to information if cases are reported, and certainly has no information on out-of-court settlements.)

104. Nevertheless, there is a perception that the right to go to court is not always sufficient to protect the interests of suppliers. The reluctance to use the courts is clear in the **DTI/CBI survey**, where, albeit from a small number of cases, no aggrieved suppliers had taken this route. By contrast, twelve had raised their complaint informally with Trade Associations and nine with the UK government (without, in general, finding the end result worthwhile).

105. This reluctance to use their legal rights can be attributed to:

- the risk of jeopardising future business, by antagonising purchasers;
- the number of different review bodies and legal systems, and the costs this imposes on companies (a Commission initiative to produce a compendium of national procurement law may marginally reduce this);
- legal action can only hope to address significant procedural breaches: it is not a good way of addressing systematic breaches, because one case will appear insignificant, or unfair award decisions, where the issue is whether the criteria for award have been properly applied;
- if the contract has already been awarded, there is the difficulty of proving damage.

The Commission

106. The Commission currently adopts a legalistic, case-based approach to enforcement, responding to individual complaints by taking them up with Member States. It also concentrates resources on the biggest cases, where there is more likely to be a shock effect on other purchasers.

107. In some notable cases, the Commission has taken Member States to court through proceedings under article 169 of the EC Treaty. For example, in the 1989 Storebaelt case (Case 243/89 Commission v Denmark) a Danish public purchaser awarded a major infrastructure project to a Danish lead consortium. The Commission went to the European Court of Justice (ECJ) and requested interim measures to suspend the execution of the already awarded contract, on the grounds that the contract included clauses requiring the maximum use of Danish materials and manpower. Although the Danes and the Commission reached an out-of-court compromise, this involved the payment of substantial damages by the Danes to the unsuccessful bidder.

108. In another case, the ECJ suspended the execution of a contract award made in 1991 by the Italian Ministry of Finance for computerization of the national lottery (Case 272/91R Commission v Italy). The contract had not been advertised in the EC Official Journal, and included specifications that the supplier should be mainly publicly owned. As with the Storebaelt case, the existence of legal remedies under national law did not prevent the Commission taking action.

109. Such large cases may well have an impact on the awareness and behaviour of purchasers. But this does not justify the legalistic nature of the Commission's approach to enforcement in general. Even where there are legal grounds, few cases will go this far. Court proceedings are preceded by a compulsory administrative stage - lasting on average 20 months - during which the Commission has no power to suspend award procedures, although it can request suspension, or seek interim measures from the ECJ, as in the cases above. Furthermore, although such cases have demonstrated to purchasers that they will not get away with blatant breaches of the law, such as nationalistic contract clauses, these are not the main problems in the market. And, inevitably, more stress is placed on the legal rectitude of purchaser behaviour rather than the basis for award decisions.

110. Meanwhile comparatively little effort is put into tackling systematic abuses, such as over-use of the accelerated procedure. **The Commission should assign resources to the monitoring of systematic non-compliance: devoting staff to areas such as the improvement of advertising rates and use of qualification systems and the accelerated procedure.**

UK Government

111. There is no formal role for national governments in the enforcement system (although on the purchasing side, national governments are responsible for all parts of the state: their

relationship to other contracting authorities - eg private utilities - is less clear). In practice, however, HMG has a role in assisting UK suppliers and monitoring abuses.

112. The Single Market Compliance Unit (SMCU) at DTI exists to help UK companies experiencing barriers to trade resulting from breaches of EC law or the EEA agreement by other countries. But the SMCU does not and can not duplicate the expertise on individual directives which lies with the lead departments and Divisions in Whitehall, and therefore on public procurement complaints must work closely with HM Treasury, which has the lead responsibility within Whitehall for the directives, and therefore has the expertise and the contacts to assist in taking cases forward. DTI and other Whitehall sponsorship divisions can also assist in taking forward individual complaints by providing sectoral expertise.

113. HMG has, in general, helped suppliers take alternative routes to legal action through the national courts: eg raising complaints bilaterally with other Member States, and helping companies to pursue complaints with the Commission. It has to be emphasised, however, that there have been comparatively few cases involving complaints about public purchasing in the EC(11): 23 in total. Of these, in 6 cases the company did not wish to pursue the complaint; in 5 cases it was concluded that there was no breach of rules; in 4 cases there was insufficient evidence to justify pursuing the complaint but SMCU/DTI Sponsor divisions are monitoring the situation and maintaining contact with companies involved. Cases being taken forward by SMCU/HMT include complaints about non-advertising of contracts in, for example, printing, carpets and office furniture sectors; discriminatory levels of pre-qualification charges; a discriminatory German suppliers regional preference scheme; and alleged discrimination in the award of contracts.

114. HMG has experienced problems in taking forward cases for the following reasons:

- companies are reluctant to risk future business by agreeing to action - this has led to the abandonment of some cases;
- lack of any procedural breach by the purchaser: the purchaser may have awarded the contract in an apparently economically unjustified manner, but unless there has been a blatant slip, the scope of the directives is too broad to make such an accusation stick; and
- the inadequacy of TED as a monitoring tool, which makes complaints regarding lack of advertised contracts difficult to substantiate.

115. A change of approach is needed to overcome these problems. As with the Commission, HMG should follow through protests about, for example, unreasonably high prequalification charges by purchasers, or cases where the commercial justification for an award appear to be limited, even if the formal procedures have been followed. Purchasers who appear to be in "cosy" relationships with suppliers, or awarding only to national suppliers, should be continuously

monitored and put under pressure to justify their purchasing strategies.

116. This need not require greater resources if the number of cases remains low, and the Commission provides the necessary data for effective monitoring of the market. A rise in complaints, however, would have implications for resources. This would also be the case if HMG considered that it should provide substantial legal advice to companies.

117. There is the potential for Trade Associations to participate in this new approach. They might, for example, keep track of contracts advertised in the OJ and use their contacts with companies to identify generic problems in public procurement markets. **Trade Associations should be encouraged to become involved in proactive monitoring of their sector, and to feed the results to government.**

118. A blueprint for carrying through complaints might be:

- the **SMCU**, working closely with Trade Associations and sponsorship divisions, would investigate the initial complaint;
- an apparently significant problem, falling foul of the EC Public Procurement legislation, would be taken up by HM Treasury informally with the Commission and bilaterally with the relevant Member States; if unsuccessful within 3 months, the case could then be raised formally at the **Advisory Committee on Public Contracts**;
- if not satisfactorily resolved within 2 months, the problem would be raised at the Internal Market Advisory Council by DTI representatives; and
- if still unresolved the problem could be raised at an Internal Market Council, possibly following bilateral contact with the relevant Member State at ministerial level.

In addition, HMG could consider what assistance might be provided to a stalking horse: ie a supplier which would be encouraged to go after a contract simply with the aim of obtaining a robust complaint against a purchaser.

119. It is also necessary to consider how much should be done at a UK as opposed to Commission level. If the UK government takes on a larger role in enforcement overall, it faces certain disadvantages: it risks alienating other Member States by confronting them directly, with possibly disadvantageous effects on trade; and it may imply a greater use of domestic resources. It does not possess significant formal powers, although theoretically it might bring an action against another Member State under article 170 of the EC Treaty, which allows Member States to bring before the ECJ other Member States which they feel have not fulfilled their Treaty obligations.

120. Clearly then, we should press for a change of approach by the Commission to actively investigating systematic abuses, and monitoring genuine compliance by particular purchasers in Member States.

121. This does not mean a scaling down of existing UK efforts: we must ensure that Commission attention is directed towards actions disadvantaging UK suppliers. Continual pressure on the Commission is the most likely means to induce action, and future compliance, amongst EC purchasers. There would also be the possibility of allying with other Member States with a similar attitude to lobby for possible action.

REVIEW

122. The review of the directives represents an opportunity for us to propose amendments to certain aspects of the legislation: it will also be important to have a prepared line on the likely proposals of the Commission and other Member States.

123. Some of the directives have a formal deadline for review: Remedies (20/12/95), Services (30/6/96), Utilities (30/6/98). For Supplies and Works no formal deadlines are specified. We will want to ensure that all the legislation is reviewed fully, and at an early stage.

124. Areas which should be scrutinised include the operation of the remedies system, and the role within it of the Commission. In the initial negotiations of the legislation, the Commission proposed having greater powers to intervene in contested cases, but this was opposed by the Member States. This is a topic which is likely to be brought up again and on which HMG will need a prepared stance.

125. Other measures which are likely to arise include the extension of the directives to cover sub-contractors, and contracts that are currently beneath the threshold values. There are superficial attractions to this: there have been cases brought to our attention where UK subcontractors have suffered discrimination and been unable to seek redress. But given that the current system is difficult to monitor, and that many of the smaller contracts would be unlikely to be awarded cross border anyway, it would be better to concentrate on improving the operation of the rules with their existing scope.

126. It might also be possible to deal with the problem of state aids more directly than under the current directives: for example by explicitly allowing purchasers to take this into account in their award decisions. The provision of information to suppliers is another area which will need to be examined.

127. The introduction of attestation, as an alternative to following the detailed procedures laid down in the directives, would help move the emphasis on to purchaser behaviour, as opposed to procedural correctness. A voluntary system is currently provided for under the Utilities directive, which might be extended to the public sector.

CONCLUSION

128. This review suggests that there has been limited opening up of public procurement markets elsewhere in the EC. Within the UK market, purchasers have not been particularly prone to award contracts across border, and the perception that UK firms have been particularly hard done by in this market has not therefore been substantiated.

129. This does not mean that we should be complacent: there are obstacles to UK companies entering EC markets, which must be tackled if they are to exploit the opportunities. In this study, we have emphasised the need for improved enforcement, and better information systems to allow such enforcement, in particular.

130. Although we have indicated possible areas for review in the future, it is also clear that tinkering with the legislative framework is not, now, the best way of improving access for UK suppliers. The directives govern purchasers' procedures: these procedures have been laid down precisely because most public purchasers do not have strong commercial incentives. But such procedural rules are inevitably limited in their ability to compel openness: we should hesitate before increasing the procedural burden on purchasers and suppliers.

131. For the moment, then, we should work with the directives as they stand, although in the long-term there is the possibility of exploring behavioural constraints on purchasers, as an alternative to the current rules-based system.

132. On enforcement, we must change our approach, and encourage the Commission to do so, if we are to successfully defend the interests of UK suppliers. We must not assume all is well simply because we cannot prove purchasers are breaking the rules. We should recognise that the internal constraints on purchasers - ownership, subsidies, competition and domestic politics - are likely to be more important in governing purchasing decisions than a set of procedures, and accordingly, be able to assist suppliers where their problems extend beyond simple breaches of the rules.

Annexes

1. Contract Thresholds
2. Review Timetable for the Directives
3. CBI Suppliers Survey/Results
4. Business Organisations Consulted
5. Contract Notices from the EC Official Journal

Utilities Sector

Directive 90/531/EEC S.I. 1992/3279
 (Directive 93/38/EEC
 from 1/7/94) To 31/12/93 From 1/1/94

Supplies and Services ² Energy, water and transport sectors	400,000 ECU	£282,862	£299,456
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Supplies and Services ² Telecoms Sector	600,000 ECU	£424,293	£449,184
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Indicative Notices (Supplies and Services ²)	750,000 ECU	£530,366	£561,480
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Works	5,000,000 ECU	£3,535,557	£3,743,203
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Small lots (Works only)	1,000,000 ECU	£707,155	£749,641
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² Services from 1/7/94

REVIEW DATES FOR PUBLIC PROCUREMENT DIRECTIVES

88/295	Supplies	No review specified
89/440	Works	No review specified
89/665	Compliance	20/12/95. Not later than 4 years after 21/12/91 (Art. 4)
90/531	Utilities	31/12/96. Not later than 4 years after 1/1/93
92/13	Remedies	31/12/96. Not later than 4 years after 1/1/93
92/50	Services	30/6/96. Not later than 3 yrs after 1/7/93 - Art. 43
93/36	Supplies	Review covered in Art. 29(2) but no date given
93/37	Works	No review specified
93/39	Utilities	30/6/98. Not later than 4 yrs after 1/7/94 - Art. 44

PUBLIC PARTICIPATION SURVEY

The purpose of this survey is to collect information from the public about the proposed project and to ensure that the public has an opportunity to provide input into the decision-making process. The survey is being conducted as part of the public participation process for the proposed project. The survey is being conducted in order to collect information from the public about the proposed project and to ensure that the public has an opportunity to provide input into the decision-making process. The survey is being conducted in order to collect information from the public about the proposed project and to ensure that the public has an opportunity to provide input into the decision-making process.

PLEASE PRINT NAME AND ADDRESS

Name: _____ Address: _____

Phone: _____

City: _____ State: _____ Zip: _____

Comments: _____

Signature: _____

Project Name: _____
 Location: _____
 Project Description: _____

Confederation of British Industry
Industrial Policy Group
Centre Point
103 New Oxford Street
London WC1A 1DU

For office use only

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Please return to the CBI by Friday 28th January 1994

PUBLIC PROCUREMENT SURVEY

This joint CBI-DTI survey on public procurement within the European Community is being undertaken using two different questionnaires: one for purchasers and one for suppliers.

The EC public procurement legislation has enforced a new set of rules with regard to the purchasing by central and local government, regional authorities and the utilities (ie companies in the water, oil, coal, gas, electricity, heat, transport and telecommunications sectors). The purchaser survey aims to assess what actual impact these rules have had on these organisations and on the opening up of the market.

The supplier survey meanwhile aims to establish what difference the legislation has made to those suppliers, contractors and service providers who sell to the public procurement market, what barriers suppliers have been facing and what improvements could be made.

The survey will assist the CBI in determining its future work programme in this field, particularly with the legislation coming up for review in three years' time. The DTI are to use the survey as part of their public procurement initiative which is looking at both helping UK suppliers to win business in Europe and identifying, and rectifying, the problems they are experiencing in this market.

Your participation in the survey will help to ensure the quality of the results.

If you have any queries concerning this survey, please contact Nicole Jackson, Policy Adviser on 071 379 7400 ext 2311.

Can this response be made available to the DTI in order that they can perform follow-up interviews as applicable?

Yes	No

Supplier Questionnaire

1 Do you sell to the public sector (central & local govt, regional and health authorities) and the utilities (water, oil, coal, gas, electricity, heat, transport and telecommunications sectors)?

Yes	No

How much of your organisation's turnover is sold to the public sector and utilities?
Please tick one box

<5%	5-10%	11-25%	26-50%	51-75%	>75%

2 Are you aware of the EC public procurement legislation?

Yes	No

If so, which of the following legislation do you think has an impact on your business? Please tick as appropriate

Works Directive
Public Works Contracts Regulations
Supplies Directive
Public Supply Contracts Regulations
Compliance Directive
Public Services Directive

Utilities Directive
Remedies Directive
Utilities Supply & Works Regulations

3 In 1993, which countries were your major markets (both public and private sector)? Please indicate the number of contracts and their total approximate value

	No of Contracts	£m		No of Contracts	£m
Belgium			Italy		
Denmark			Luxembourg		
*EEA countries			Netherlands		
France			Portugal		
Germany			Spain		
Greece			UK		
Ireland			Other		

*Where European Economic Area (EEA) equals Norway, Sweden, Finland, Austria, Iceland and Liechtenstein.

4 In 1993, in which countries did you BID for public sector or utilities contracts? Please indicate the number of contracts and their total approximate value

	No of Contracts	£m		No of Contracts	£m
Belgium			Italy		
Denmark			Luxembourg		
EEA countries			Netherlands		
France			Portugal		
Germany			Spain		
Greece			UK		
Ireland			Other		

5 Since the legislation was implemented* are you bidding for a greater number of contracts with EC purchasers outside the UK?

Yes	No

*1/1/89 for Supplies Directive
19/7/90 for Works Directive
1/1/93 for Utilities Directive
1/7/93 for Public Services Directive

6 What in your opinion has been and is likely to be, the net effect on your business of the legislation?

positive (ie net gain of business)
no change
negative (ie net loss of business to other suppliers)

To date	Future

7 What information sources have you ever used when looking for opportunities?
Which do you regularly use? (Please rank accordingly).

	Use	Rank
Official journal of the European Communities		
Tenders Electronic Daily		
EuroInfo Centres		
DTI offices		
National Press		
Trade Press		
Foreign Press		
Personal/direct contact with purchaser		
Trade Fairs		
Use of local agent		
Representative office		
Local subsidiary		
Other (please specify)		

8 How easy is it in your opinion to find out about the opportunities in the public procurement market?

Very easy	Easy	Neither easy nor difficult	Difficult	Very difficult

9 Have you engaged in any of the following to bid for public procurement contracts?

Joint venture	
Partnership	
Use of local agent	
Use of subsidiary	

10 What have been the principal deterrents for your organisation when bidding for public procurement contracts?
Please tick as appropriate

Procedural factors	
The qualifying tests to bid for contracts	<input type="checkbox"/>
Failure to send information on the contract	<input type="checkbox"/>
Sending of incorrect or insufficient information on the contract	<input type="checkbox"/>
Meeting response timetables	<input type="checkbox"/>
Unfair or illegal technical specifications or standards	<input type="checkbox"/>
Complex technical specifications or standards	<input type="checkbox"/>
Changes to specifications	<input type="checkbox"/>
Cancelling of contract procedure	<input type="checkbox"/>

Other factors	
Lack of contacts	<input type="checkbox"/>
Lack of knowledge of markets/main purchasing organisations	<input type="checkbox"/>
Language problems	<input type="checkbox"/>
Labour laws (including Health and Safety laws)	<input type="checkbox"/>
Licensing requirements	<input type="checkbox"/>
Subcontracting arrangements	<input type="checkbox"/>
Legal costs	<input type="checkbox"/>
Movements in exchange rates	<input type="checkbox"/>
Cultural factors	<input type="checkbox"/>
Inadequate capacity	<input type="checkbox"/>
Insufficient export experience of contracts of that size	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>

- 11 Based on your experience in 1993 please rank the following costs of the tendering process in order of importance:**

Cost of obtaining information	<input type="checkbox"/>
Legal costs	<input type="checkbox"/>
Translation costs	<input type="checkbox"/>
Qualification requirements	<input type="checkbox"/>
Complying with technical standards/ specifications	<input type="checkbox"/>
Cost of preparing tender	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>

- 12 Have you pursued a complaint as a result of the measures available to you under the public procurement legislation?**

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If YES, to which of the following did you take your complaint?

National Courts	<input type="checkbox"/>
The Commission	<input type="checkbox"/>

In addition did you take your complaint informally to any of the following body(ies)?

UK Government	<input type="checkbox"/>
UK Trade Association	<input type="checkbox"/>
EC Trade Association	<input type="checkbox"/>
European Commission	<input type="checkbox"/>
Other Member State Governments	<input type="checkbox"/>

- 13 If you have pursued a complaint what was your opinion of the process?**

Very effective	<input type="checkbox"/>
Adequate	<input type="checkbox"/>
Inadequate because:	
Too costly	<input type="checkbox"/>
Too slow	<input type="checkbox"/>
Deterred future business	<input type="checkbox"/>
Result not worth the effort	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>

- 14 In which countries have you encountered problems? Rank in order with 1 denoting country where most problems have been faced.**

Belgium	<input type="checkbox"/>	Italy	<input type="checkbox"/>
Denmark	<input type="checkbox"/>	Luxembourg	<input type="checkbox"/>
EEA countries	<input type="checkbox"/>	Netherlands	<input type="checkbox"/>
France	<input type="checkbox"/>	Portugal	<input type="checkbox"/>
Germany	<input type="checkbox"/>	Spain	<input type="checkbox"/>
Greece	<input type="checkbox"/>	UK	<input type="checkbox"/>
Ireland	<input type="checkbox"/>		

- 15 Overall is it your opinion that the procedures are being evenly applied throughout the Community?**

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If you would like to provide us with further details please complete the section for comments on page 6.

Thank you for taking the time to complete this questionnaire.

Please complete and return to the CBI

16 Please rank what kind of publicity/information would be useful in your opinion in this field?

Information on:

- the market. ☐
- the market sectors. ☐
- identifying of purchasers. ☐
- the procedures. ☐
- TED. ☐
- compliance. ☐
- Booklets. ☐

- Seminars. ☐
- Roadshows. ☐
- Press Advertisements. ☐
- Trade Fairs. ☐
- Helplines. ☐
- Software packages. ☐
- Other (please specify)..... ☐

Basic Data Section

1 How many employees are covered by this return? (Please tick one box)

0-99	100-199	200-499	500-4999	5000-19999	20000+
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2 Please indicate the turnover covered by this return. (Please tick one box)

<£½m	£½-1m	£1-5m	£5-10m	£10-20m	£20-100m	£100-500m	>£500m
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3 Please indicate the main business activity covered by this return. (Please refer to the two digit Standard Industrial Classification on the back page of this questionnaire.)

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4 Please indicate the UK region covered by this return. (Please refer to the regional code list on the back page of this questionnaire.)

--	--

5 Please indicate the type of organisation covered by this return.

*Enterprise	*Subsidiary	*Business Unit	Other (please specify)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Enterprise: The total company, which may comprise several subsidiary companies

*Subsidiary: A legal entity, where the majority or all shares are held by a parent/holding company

*Business Unit: A specific site, factory or part of a company with clearly defined profit responsibility (ie a discrete operational unit)

6 Name: **Position:**.....

Company name:

Address:

..... **Post code:**.....

Please detach this slip and return under separate cover to the CBL, if you wish to remain anonymous

Sp. for comments not covered by your replies.

Regional Codes 1-11

Code 1 Wales (Counties)	Code 3 Northern Ireland (Borders)	Code 6 East Midlands	Code 9 South West
Chwyd	Belfast	Derbyshire	Avon
Dyfed	South Eastern	Leicestershire	Cornwall
Gwent	Southern	Lincolnshire	Devon
Gwynedd	North Eastern	Northamptonshire	Dorset
Mid Glamorgan	Western	Nottinghamshire	Gloucester
Powys			Somerset
South Glamorgan			Wiltshire
West Glamorgan			
Code 2 Scotland (L A Region)	Code 4 North	Code 7 East Anglia	Code 10 West Midlands
Borders	Cleveland	Cambs	Hereford and Worcs.
Central	Cumbria	Norfolk	Shropshire
Dumfries and Galloway	Durham	Suffolk	Staffordshire
Fife	Northumberland		Warwickshire
Grampian	Tyne and Wear	Code 8 South East	West Midlands
Highland		Bedfordshire	(met. county)
Lothian	Code 5 Yorkshire and Humberside	Berkshire	
Strathclyde	Humberside	Buckinghamshire	
Tayside	North Yorkshire	East Sussex	
Islands	South Yorkshire	Essex	
	West Yorkshire	Greater London	Code 11 North West
		Hampshire	Cheshire
		Hertfordshire	Greater Manchester
		Isle of Wight	Lancashire
		Kent	Merseyside
		Oxfordshire	
		Surrey	
		West Sussex	

Standard Industrial Classification Categories (2 digit)

DIVISION 1 Energy and Water Supply Industries		DIVISION 5 Construction
11 Coal Extraction and Manufacture of Solid Fuels	50	Construction
12 Coke Ovens		
13 Extraction of Mineral Oil and Natural Gas		DIVISION 6 Distribution, Hotels and Catering; Repairs
14 Mineral Oil Processing	61	Wholesale Distribution (except dealing in scrap and waste materials)
15 Nuclear Fuel Production	62	Dealing in Scrap and Waste Materials
16 Production and Distribution of Electricity, Gas and	64/65	Retail Distribution
Other Forms of Energy	66	Hotels and Catering
17 Water Supply Industry	67	Repair of Consumer Goods and Vehicles
DIVISION 2 Extraction of Minerals and Ores other than Fuels;		DIVISION 7 Transport and Communication
Manufacture of Metals, Mineral Products and Chemicals	71	Railways
21 Extraction and Preparation of Metalliferous Ores	72	Other Inland Transport
22 Metal Manufacturing	74	Sea Transport
23 Extraction of Minerals not elsewhere specified	75	Air Transport
24 Manufacture of Non-Metallic Mineral Products	76	Supporting Services to Transport
25 Chemical Industry	77	Miscellaneous Transport Services and Storage not elsewhere specified
26 Production of Man-Made Fibres	79	Postal Services and Telecommunications
DIVISION 3 Metal Goods, Engineering and Vehicles Industries		DIVISION 8 Banking, Finance, Insurance, Business Services and
31 Manufacture of Metal Goods not elsewhere specified		Leasing
32 Mechanical Engineering	81	Banking and Finance
33 Manufacture of Office Machinery and Data Processing Equipment	82	Insurance except for Compulsory Social Security
34 Electrical and Electronic Engineering	83	Business Services
35 Manufacture of Motor Vehicles and Parts thereof	84	Renting Movables
36 Manufacture of Other Transport Equipment	85	Owning and Dealing in Real Estate
37 Instrument Engineering		
		DIVISION 9 Other Services
DIVISION 4 Other Manufacturing Industries	91	Public Administration, National Defence and Compulsory Social
41/42 Food, Drink and Tobacco Manufacturing Industries		Security
43 Textile Industry	92	Sanitary Services
44 Manufacture of Leather and Leather Goods	93	Education
45 Footwear and Clothing Industries	94	Research and Development
46 Timber and Wooden Furniture Industries	95	Medical and other Health Services; Veterinary Services
47 Manufacture of Paper and Paper Products: Printing and Publishing	96	Other Services provided to the General Public
48 Processing of Rubber and Plastics	97	Recreational Services and other Cultural Services
49 Other Manufacturing Industries	98	Personal Services
	99	Domestic Services

Total Survey

Unweighte

Number of respondents 266

1. Do you sell to the public sector (central & local govt, regional and health authorities, and the utilities (water, oil, coal, gas, electricity, heat, transport and telecommunications sectors)?

	Yes	No	N/A
Nos	229	30	7
%	86	11	3

How much of your organisation's turnover is sold to the public sector? (Q1 No in N/A)

	<5%	5-10%	11-25%	26-50%	51-75%	>75%	N/A
Nos	41	33	39	41	30	41	41
%	15	12	15	15	11	15	15

2. Are you aware of the EC public procurement legislation (Q1 No in N/A)

	Yes	No	N/A
Nos	161	68	37
%	61	26	14

If so, which of the following legislation do you think has an impact on your business?

	Nos
Works Directive	33
Public Works Contract Regulations	61
Supplies Directive	61
Public Supply Contracts Regulations	58
Compliance Directive	39
Public Services Directive	44
Utilities Directive	78
Remedies Directive	15
Utilities Supply & Works Regulations	30

Total Survey

2. In 1993, which countries were your major markets (both public and private sector) total number of contracts and total value by country and in total, together with the percentage that each country represents of the total over all countries.

	No. of Contracts	%	Value M	%
Belgium	113	0	14	0
Denmark	88	0	6	0
*EEA Countries	319	0	32	0
France	422	1	147	1
Germany	514	1	190	1
Greece	36	0	1	0
Ireland	460	1	21	0
Italy	174	0	18	0
Luxembourg	4	0	1	0
Netherlands	393	0	25	0
Portugal	556	1	13	0
Spain	204	0	19	0
UK	76496	92	12299	92
Other	3431	4	643	5
Total (of the above)	83210	100	13429	100

*Where European Economic Area (EEA) equals Norway, Sweden, Finland, Austria, Iceland and Liechtenstein

4. In 1993, in which countries did you BID for public sector or utilities contracts?

	No. of Contracts	%	Value M	%
Belgium	58	0	42	0
Denmark	9	0	1206	7
EEA Countries	461	1	157	1
France	190	0	375	2
Germany	704	1	111	1
Greece	16	0	23	0
Ireland	92	0	93	1
Italy	32	0	19	0
Luxembourg	7	0	1	0
Netherlands	17	0	72	0
Portugal	42	0	41	0
Spain	57	0	12	0
UK	60473	96	14390	80
Other	1000	2	1483	8
Total (of the above)	63158	100	18024	100

5. Since the legislation was implemented* are you bidding for a greater number of contracts with EC purchasers outside the UK?

*1/1/89 for Supplies Directive
19/7/90 for Works Directive
1/1/93 for Utilities Directive
1/7/93 for Public Services Directive

	Yes	No	N/A
%	17	75	8

6. What in your opinion has been and is likely to be, the net effect on your business of the legislation?

To date % Future %

positive (ie net gain of business)	8	25
no change	68	36
negative (ie net loss of business to other suppliers)	10	17
no answer	14	22

7. What information sources have you ever used when looking for opportunities?
which do you regularly use? (Rank accordingly)

Absolute Numbers

	Use	Avg Rank	Rank 1	2	3	4	5	6	7	8	9	10	11	12	13
Official Journal of the Europe	135	2.7	40	17	18	17	5	5	2	2	0	1	0	0	0
Tenders Electronic Daily	11	4.8	0	2	2	0	1	0	2	0	1	0	0	0	0
EuroInfo Centres	15	6.1	0	1	2	2	0	1	2	1	1	2	0	0	0
DTI Offices	66	4.4	3	9	4	16	9	8	3	1	3	0	0	0	0
National Press	103	4.2	1	17	17	23	10	8	4	5	1	1	0	0	0
Trade Press	136	3.4	8	27	29	22	16	8	2	1	0	0	0	0	0
Foreign Press	25	6.3	1	1	1	0	4	3	2	2	2	1	1	0	0
Personal/direct contact with p	183	1.8	90	30	23	9	1	2	0	0	0	1	0	0	0
Trade Fairs	77	3.8	1	15	21	9	9	2	4	0	1	1	1	0	0
Use of local agent	86	2.4	19	33	10	8	3	2	0	0	0	1	0	0	0
Representative office	36	3.1	2	8	10	5	1	1	1	0	0	0	0	0	0
Local subsidiary	46	2.9	10	9	6	4	4	1	1	1	0	0	0	0	0
Other	38	2.4	12	12	3	2	5	1	0	0	0	0	0	0	0

8. How easy is it in your opinion to find out about the opportunities in the public procurement market?

Very Easy Easy Neither easy nor difficult Difficult Very difficult No Answer

% 2 15 37 24 12 11

9. Have you engaged in any of the following to bid for public procurement contracts?

Nos %

Joint venture	70	26
Partnership	35	13
Use of local agent	65	24
Use of subsidiary	46	17

10. What have been the principal deterrents for your organisation when bidding for public procurement contracts?

	Mos	%
Procedural factors		
The qualifying tests to bid for contracts	76	29
Failure to send information on the contract	35	13
Sending of incorrect or insufficient information on the contract	48	18
Meeting response timetables	71	27
Unfair or illegal technical specifications or standards	36	14
Complex technical specifications or standards	48	18
Changes to specifications	16	6
Cancelling of contract procedure	18	7
Other factors		
Lack of contracts	83	31
Lack of knowledge of markets/main purchasing organisations	75	28
Language problems	50	19
Labour laws (including Health and Safety Laws)	15	6
Licensing requirements	11	4
Subcontracting arrangements	7	3
Legal costs	4	2
Movements in exchange rates	20	8
Cultural factors	26	10
Inadequate capacity	19	7
Insufficient export experience of contracts of that size	21	8
Other	37	14

11. Based on your experience in 1993 rank the following costs of the tendering process in order of importance:

	Absolute Numbers							
	Avg	Rank						
	Rank	1	2	3	4	5	6	7
Cost of obtaining information	3.0	22	33	37	22	17	4	1
Legal costs	4.5	0	4	13	25	28	20	0
Translation costs	3.8	10	18	15	12	7	30	0
Qualification requirements	2.8	25	44	28	22	11	6	0
Complying with technical stand	2.7	31	38	34	15	14	7	0
Cost of preparing tender	1.7	111	29	14	10	4	2	0
Other	1.4	5	1	1	0	0	0	0

12. Have you pursued a complaint as a result of the measures available to you under the public procurement legislation?

	Yes	No	N/A
Nos	10	228	28
%	3	86	11

If yes to which of the following did you take your complaint?

	Nos
National Courts	0
The Commission	2

In addition did you take your complaint informally to any of the following?

	All		Q12 Yes		Q12 No	
	Nos	%	Nos	%	Nos	%
UK Government	9	3	6	60	3	1
UK Trade Association	12	5	8	80	6	3
EU Trade Association	0	0	0	0	0	0
European Commission	1	0	1	10	0	0
Other Member State Governments	1	0	1	10	0	0

If you have pursued a complaint what is your opinion of the process?

	Nos	%
Very Effective	0	0
Adequate	0	0
Inadequate	14	140
No answer	252	2520
Inadequate because		
Too costly	0	0
Too slow	7	50
Deterred future business	3	21
Result not worth the effort	10	71
Other	0	0

14. In which countries have you encountered problems?
Rank in order with 1 denoting country where most problems have been faced.

	Average	Rank	1	2	3	4	5	6	7	8	9	10	11	12	13
Belgium	3.7		0	3	3	1	1	1	1	0	0	0	0	0	0
Denmark	6.0		1	0	0	1	0	0	0	2	1	0	0	0	0

Annex 4

Organisations Consulted

Trade Associations

Mr A Pollington
Chartered Institute of Purchasing and Supply
Easton House
Easton-on-the-Hill
STAMFORD
Lincs
PE9 3NZ

Mr T Nash
Chief Executive
Chartered Institute of Marketing
Moor Hall
COKKHAM
Berks
SL6 9QH

Mr A K Goldsmith
Export Group for the
Constructional Industries
15-17 King Street
LONDON
SW17 6QU

Mr N Chaldicott Esq
Secretary
Construction Industry Employers Council
The Building Centre
26 Store St
London
WC1E 7BT

H Mc K Simpson
Constructor's Liason Group
c/o Electrical Contractors Association
ESCA House
34 Palace Court
London
W2 4HY

Mr D Barrell
Federation of Manufacturers of
Construction Equipment and Cranes
22-26 Dinwall Road
CROYDON
CR0 9XF

Confederation of Construction
Specialists
75-79 High Street
ALDERSHOT
Hants
GU11 1BY

Mrs H Helps
British Property Federation
35 Catherine Place
London
SW1E 4DY

Mr A Fell
British Aggregate Construction Materials Industries
156 Buckingham Palace Rd
London
SW17 9TR

Mr G Watts
Chief Executive
Construction Industry Council
The Building Centre
26 Store St
London
WC1E 7BT

Mr J Turner
Federation of Civil Engineering Contractors
Cowdray House
6 Portugal St
London
WC2A 2HH

Mr D Gillian
Director General
Railway Industry Association
6 Buckingham Gate
LONDON
SW1E 6JP

Mr J G Gaddes
Director General
Federation of British Electrotechnical
& Allied Manufacturers Associations (BEAMA)
8 Leicester Street
LONDON
WC2H 7DN

Mr Baker BSc
Director General
Federation of Environmental
Trade Associations (FETA)
Sterling House
6 Furlong Road
Bourne End
BUCKS
SL8 5DG

Mr P Carver
Director General
Association of Manufactuers of
Domestic Electrical Appliances (AMDEA)
Leicester House
8 Leicester Street
LONDON
WC2H 7BN

Mr P Wood
Head of International Trade
Society of Motor Manufacturers
and Traders
Forbes House
Halkin Street
LONDON

Mr P Sachs
Director
Association of the Electronics,
Telecommunications and Business
Equipment Industries
Russell Square House
2nd Floor, 10-12 Russell Square
LONDON
WC1B 5AE

Dr D Eyeions
Director General
Computing Services Association (CSA)
Hanover House
73/74 High Holborn
LONDON
WC1V 6LE

Mr H Pelto
Director
British Radio Equipment
Manufacturers Association (BREMA)
Landseer House
19 Charing Cross Road
LONDON
WC2H 0ES

Mr P A Flanagan
Secretary General
British Laboratory Ware
Association (BLWA)
30/32 Worple Road
LONDON
SW1

Mr G C Young
Chief Executive
The Gambica Association Ltd
Leicester House
8 Leicester Street
LONDON
WC2H 7BN

Mr D Fazackerley
National Liftmakers Association
33-34 Devonshire Street
LONDON
W1N 1RF

Mr OD Somerville-Jones
Chief Executive
Energy Industries Council (EIC)
Newcomber House
45 Nottinghill Gate
LONDON
W11 3LQ

Mr R Savinson
Managing Director
Electricity Association Services Ltd
30 Millbank
LONDON
SW1P 4RD

Mr M Milner
Director
British Chemical Engineering
Contractors Association
1 Regent Street
LONDON
SW1Y 4NR

Mr T Glanfield
Director
British Pump Manufacturers Association
Carlyle House
235 Vauxhall Bridge Road
LONDON
SW1V 1EJ

Mr D Harris
Secretary General
Aluminium Federation
Broadway House
Calthorpe Road
Five Ways
Birmingham B15 1TN

Mr A Henderson
Director
British Valve and Actuator Manufacturers Association
8th Floor
Bridge House
Smallbrook
Queensway
Birmingham
B5 4JP

Mr B Reynolds
Chief Executive
British Water
1 Queen Anne's Gate
LONDON
SW1H 9BT

Mr J Hills
Director and Secretary
British Effluent and Water
Association (BEWA)
5 Castle Street
HIGH WYCOMBE
Bucks
HP13 6RZ

Mr J Prestridge
Director
British Water Industries Group (BWIG)
9 Harley Street
LONDON
W1N 2AL

Dr H W D Hughes OBE
Director General
UK Offshore Operators'
Association (UKOOA)
3 Hans Crescent
LONDON
SW1X 0LN

Mr H Boyd Esq
Secretary
UK Offshore Operators'
Group (UKOOG)
4th Floor
63 Duke Street
LONDON
W1M 5DH

Mr I M Bell
Secretary
Offshore Contractors Council
52 Queens Road
Aberdeen
AB1 6YE

Captain Taylor
Director
British Marine Equipment Council
4th Floor
30 Great Guildford St
London
SE1 OHS

Mr A Parker
BP Insurance
Britannic House
1 Finsbury Circus
LONDON
EC2M 7BA

Mr R G Miller
AIRMIC
6 Lloyds Avenue
LONDON
EC3M 3AJ

Mr D Hough
BIIBA
BIIBA House
14 Bevis Marks
LONDON
EC3A 7NT

Mr I J Blankey
British Independent Steel Producers
Association (BISPA)
5 Cromwell Road
LONDON
SW7 2HX

Mr R C Robertson
Stainless Steel Fabricators'
Association (SSFA)
77 Renfrew Street
GLASGOW
G2 3BZ

Mr D Porter
Chief Executive
Association of Independent
Electricity Producers
41 Whitehall
First Floor
LONDON
SW1A 2BX

Mr D Green
Combined Heat and Power Association
3rd Floor
Grosvenor Gardens House
Grosvenor Gardens
LONDON
SW1W 0BS

Mr R Savinson
Director
Electricity Association
30 Millbank
LONDON
SW1W 0BS

Mr S Gray MBE
Director
Office Products and Furniture Council
EEA
Russell Square House
10-12 Russell Square
LONDON WC1B 5EE

Mr P Oldfield Murray
Director General
The British Contract Furniture Association
Suite 16, The Business Design Centre
52 Upper Street
Islington
London
N1 0QH

Mr B Whittaker
Catering Equipment Manufacturers Association
235-237 Vauxhall Bridge Rd
London
SW1V 1EJ

Mr J Wilson
Executive Director
The British Carpet Manufacturers
Association Ltd
Royalty House
72 Dean Street
LONDON
W1V 5HB

Mr John Wilson Esq
Director
British Clothing Industry Association
British Apparel and Textile Centre
7 Swallow Place
LONDON
W1R 7A

Scottish Textiles Association
45 Moray Place
EDINBURGH
EH3 6EQ

Mr David Harris
Secretary General
Aluminium Federation
Broadway House
Calthorpe Road
Five Ways
Birmingham B15 1TN

Mr Simon Payton
Director
British Non Ferrous Metals Federation
10 Greenfield Crescent
Birmingham
B15 3AU

Mr J Vowles
Agricultural Engineers Association
Samuelson House
Paxton Rd
Orton Centre
Peterborough
PE2 5LT

Mr Colin Stanley
British Printing Industries Federation
11 Bedford Row
London
WC1R 4DX

Mike Preston
Head of Technical Secretariat
AEA Technology
Harwell Didcot
Oxfordshire
OX11 0RA

TEC National Council (cascaded to all TECs nationally)
The Oaks
Clewes Road
Redditch
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HM Embassies

HM Embassies in the EC were consulted.

ANNEX B: EXAMPLES OF CONTRACT NOTICES.

18. 5. 94

Supplement to the Official Journal of the European Communities

No S 94/19

Open procedures (continued)

D-Halberstadt: steel construction and metal-fitting works (Only the original text is authentic)

(94/S 94-31220/DE)

1. **Awarding authority:** Landkreis Halberstadt, Friedrich-Ebert-Straße 42, D-38820 Halberstadt.
Tel. (039 41) 34-0. Facsimile (039 41) 34-333.
2. (a) **Award procedure:** Public invitation to tender.
(b) **Contract type:** Execution to specifications.
3. (a) **Site:** D-38820 Halberstadt.
(b) **Works:** Reference 24-41204-2-1/12.
Steel construction and metal-fitting works.
(c) **Division into lots:** No.
(d) **Preparation of plans:** No.
See notice in original language.
4. **Completion deadline:** Works to commence in week 40, 1994.
Works to be completed by week 42, 1995.
5. (a) **Documents from:** QTB Projektsteuerung GmbH, Freundallee 13, D-30173 Hannover, until 27. 5. 1994.
(b) **Fee:** Contract documents: 35 DM.
Payment method: cheque.
Payee: St. Salvator Krankenhaus, Halberstadt.
Account No 29406868.
6. (a) **Deadline for receipt of tenders:** 9. 6. 1994 (10.00).
(b) **Address:** As in 1.
Tenders must be marked as follows: Vergabenummer: 24-41204-2-1/12.
(c) **Language(s):** German.
7. (a) **Opening of tenders (persons admitted):** Tenderers and their authorized representatives.
(b) **Date, time and place:** 9. 6. 1994 (10.00).
As in 1.
8. **Deposits and guarantees:** See notice in original language.

9. **Financing and payment:** Payment in accordance with contract documents.
10. **Legal form in case of group bidders:** Consortium with joint and several liability and designated lead contractor.
11. **Qualifications:** Tenderers' financial and economic resources will be assessed on the basis of a statement of turnover for each of the past 3 years.
Tenderers' technical resources will be assessed on the basis of: a list of the works effected during the past 5 years; a statement of average annual manpower over the past 3 years; a statement of the firm's technical plant and equipment.
Tenderers' trade or professional standing will be assessed on the basis of registration in the appropriate trade or professional register.
See notice in original language.
12. **Tenders may lapse after:** 28. 10. 1994
13. **Award criteria (other than price):** Economically most advantageous offer assessed on the basis of: time limit for completion, quality, profitability, other criteria.
- 14.
15. **Other information:** From the address in 5 (a).
Technical information: Planungsgesellschaft für Krankenhausbau Düker Bahlo Köhnke Siosberg GmbH, Herr Pogemann, Schützenstraße/Baustelle, D-38820 Halberstadt, tel. (039 41) 60 51 00, facsimile (039 41) 60 51 02.
Administrative information: Nachprüfungsstelle: Oberfinanzdirektion Magdeburg, Olvenstedter Straße 1-2, D-39108 Magdeburg, tel. (03 91) 567 16 14, facsimile (03 91) 567 15 77.
16. **Date of publication of pre-information:** 15. 4. 1993.
17. **Notice postmarked:** 10. 5. 1994.
18. **Notice received on:** 10. 5. 1994.

Works — Layout of tender notices

Tender notices sent for publication in the Official Journal must be set out as shown in the model notices for open and restricted public works tenders given in Annexes IV, V and VI to Council Directive 89/440/EEC of 18 July 1989⁽¹⁾. This layout is obligatory because it facilitates rapid publication and ensures that all contracts, wherever in the Community the project is situated, are advertised in the same manner and in the same amount of detail.

Notices, while providing clear and complete information, should be concise. Directive 89/440/EEC limits them to a maximum length of one page of the Official Journal, or about 650 words.

⁽¹⁾ OJ No L 210, 21. 7. 1989, p. 1.

Restricted procedures

D-Wehr: sewage-treatment plant*(Only the original text is authentic)*

(94/S 94-31103/DE)

1. **Awarding authority:** Zweckverband Kläranlage Wehr, Rathaus, D-79664 Wehr.
Tel. (077 62) 80 80.
2. (a) **Award procedure:** Restricted invitation to tender.
National legislation applicable: VOB/A § 3a, Nr. 1 b.
(b)
(c) **Contract type:** See notice in original language.
3. (a) **Site:** D-79664 Wehr-Öflingen.
(b) **Works:** Sewage-treatment plant. Electrical work. Cables. Various works. Associated works.
(c) **Division into lots:** No.
(d)
4. **Completion deadline:** 1994-1996.
5. **Legal form in case of group bidders:** Joint-liability consortium.
6. (a) **Deadline for receipt of applications:** 14. 6. 1994.
(b) **Address:** As in 1.

(c) **Language(s):** German.

7. **Final date for the dispatch of invitations to tender:** 30. 6. 1994.
8. **Deposits and guarantees:** See notice in original language.
9. **Financing and payment:** National legislation applicable: § 16 VOB/B.
See notice in original language.
10. **Qualifications:** See notice in original language.
11. **Award criteria (other than price):** National legislation applicable: § 25 VOB/A.
12. **Variants:** No.
13. **Other information:** IBR Ingenieurbüro Redlich und Partner GmbH, Beratende Ingenieure für Elektrotechnik, Rheingauer Straße 9, D-65388 Schlangenbad, tel. (061 29) 20 44-45, facsimile (061 29) 20 23.
Administrative information: Regierungspräsidium Freiburg.
- 14.
15. **Notice postmarked:** 6. 5. 1994.
16. **Notice received on:** 6. 5. 1994.

DK-Copenhagen: construction work*(Open to US bidders - Only the original text is authentic)*

(94/S 94-31381/DA)

1. **Awarding authority:** Lyneufællesskabet I/S, ved Stadsingeniørens Direktorat, Farvergade 27A, DK-1463 København K.
Tel. 33 66 33 66. Facsimile 33 93 23 42.
2. (a) **Award procedure:** Restricted invitation to tender.
(b)
(c) **Contract type:** As indicated in the contract documents.
3. (a) **Site:** Renseanlæg Lynetten, Refshalevej 250, DK-1432 København K.
(b) **Works:** Ventilation. Industrial buildings and installations. Supply. Commissioning. Quantity: approximately 58 000/65 000 m³/h.
(c), (d)
4. **Completion deadline:** Duration of works:
1. 4. 1995-1. 4. 1996.
See contract documents.
- 5.
6. (a) **Deadline for receipt of applications:** 16. 6. 1994.
(b) **Address:** Applications must be marked as follows: Ly-

neuegrupper, v/I. Krüger AS, Gladsaxevej 36, DK-2860 Søborg, tel. 39 69 02 22, facsimile 39 69 18 02.

See contract documents.

(c) **Language(s):** Danish.

7. **Final date for the dispatch of invitations to tender:** 20. 7. 1994.
8. **Deposits and guarantees:** Provisional bond: 10 %.
9. **Financing and payment:** See contract documents.
10. **Qualifications:** Details of the information required on the contractor's position, and of the minimum economic and technical standards, may be obtained from the awarding authority at the address in 1.
See contract documents.
11. **Award criteria (other than price):** Economically most advantageous offer assessed on the basis of: quality, price, other criteria.
See contract documents.
12. **Variants:** See contract documents.
13. **Other information:** From the awarding authority at the address in 1.
- 14.
15. **Notice postmarked:** 5. 5. 1994.
16. **Notice received on:** 10. 5. 1994.

Contract awards (continued)

D-Göttingen: steam-based sterilization and disinfection equipment

(Only the original text is authentic)
(94/S 94-31267/DE)

1. **Awarding authority:** Staatshochbauamt Göttingen, Herzberger Landstraße 14, D-37085 Göttingen.
Tel. (05 51) 39 90 42. Facsimile (05 51) 39 42 78.
2. **Award procedure:** Open procedure.
3. **Date of award:** 22. 4. 1994.
4. **Award criteria (other than price):** Economically most advantageous offer assessed on the basis of: price, profitability, quality.
5. **Tenders received:** 6.

6. **Successful contractor:** Münchner Medizin Mechanik, Semmelweisstraße 5, D-82141 Planegg/München.
7. **Services provided:** Reference 1-7/94.
Supply and installation of steam-based sterilization and disinfection equipment, disassembly of existing equipment and removal of asbestos.
8. **Price(s):** 677 689,25 DM-944 056,34 DM.
- 9.
10. **Other information:** Administrative information: Oberfinanzdirektion Hannover, Referat Bau 21, Postfach 240, D-30002 Hannover.
11. **Notice published on:** 10. 2. 1994.
94/S 28-7648.
12. **Notice postmarked:** 5. 5. 1994.
13. **Notice received on:** 10. 5. 1994.

D-Göttingen: work benches and cleaning installation

(Only the original text is authentic)
(94/S 94-31269/DE)

1. **Awarding authority:** Staatshochbauamt Göttingen, Herzberger Landstraße 14, D-37085 Göttingen.
Tel. (05 51) 39 90 42. Facsimile (05 51) 39 42 78.
2. **Award procedure:** Open procedure.
3. **Date of award:** 22. 4. 1994.
4. **Award criteria (other than price):** Economically most advantageous offer assessed on the basis of: price, quality, quality.
5. **Tenders received:** 4.

6. **Successful contractor:** AD. Krunth GmbH + Co., Wandsbecker Königsstraße 27-29, D-22041 Hamburg.
7. **Services provided:** Reference 'Vergabenummer 1-8/94'.
4 work benches, 2 wall cabinets and a cleaning installation in stainless steel.
8. **Price(s):** 78 948,38 DM-120 836,94 DM.
- 9.
10. **Other information:** Administrative information: Oberfinanzdirektion Hannover, Referat Bau 21, Postfach 240, D-30002 Hannover.
11. **Notice published on:** 10. 2. 1994.
94/S 28-7484.
12. **Notice postmarked:** 5. 5. 1994.
13. **Notice received on:** 10. 5. 1994.

D-Nuremberg: electrical work

(Only the original text is authentic)
(94/S 94-31292/DE)

1. **Awarding authority:** Finanzbauamt Nürnberg, Sandstraße 20, D-90443 Nürnberg.
Tel. (09 11) 248-26 51. Facsimile (09 11) 248-28 99.
2. **Award procedure:** Open procedure.
3. **Date of award:** 27. 4. 1994.
4. **Award criteria (other than price):** Economically most advantageous offer assessed on the basis of: price, time limit for completion, profitability, quality.
5. **Tenders received:** 17.

6. **Successful contractor:** Siemens AG, Von-der-Tann-Straße 30, D-90439 Nürnberg.
7. **Services provided:** Electrical work. Contract No 93 E 0104. Administrative building.
8. **Price(s):** 2 000 000 DM - 3 400 000 DM.
- 9.
10. **Other information:** Administrative information: Oberfinanzdirektion Nürnberg, Krelingsstraße 50, tel. (09 11) 376-0, facsimile (09 11) 376-27 76.
11. **Notice published on:** 4. 6. 1992.
92/S 108-20705.
12. **Notice postmarked:** 6. 5. 1994.
13. **Notice received on:** 10. 5. 1994.

F-Paris: museum

(Only the original text is authentic)
(94/S 94-31367/FR)

1. **Awarding authority:** Établissement public du Grand Louvre, 153, rue Saint-Honoré, F-75044 Paris Cedex 01.
Tel. 42 97 09 90. Facsimile 42 97 08 66.
- 2., 3., 4., 5.

6. **Successful contractor:** M. Esmoingt.
7. **Services provided:** Museum. Grand Louvre. Lot No 246.44: Facade works. Restoration.
8. **Price(s):** 2 242 133 FF.
- 9., 10., 11.
12. **Notice postmarked:** 6. 5. 1994.
13. **Notice received on:** 10. 5. 1994.

